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April 15, 2005

800 MHz Transition Administrator, LLC
Attn. Robert B. Kelly
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Washington, DC 20044-0407
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Re: Reimbursement for So-Called "Soft" Costs of Transition

Dear Mr. Kelly:

This follows up on our recent conversations. This law firm represents several non-Nextel 800 MHz licensees in the 851-854 MHz band -- both parties to the FCC rulemaking proceeding and licensees that did not participate in that proceeding but will be required to relocate pursuant to the decisions therein.

As we have discussed, the FCC, in its December 22, 2004 *Supplemental Order and Order on Reconsideration*, FCC 04-294, at ¶70, page 32, set forth a general policy that reimbursement for the costs of attorneys and consultants during the transition process would be subject to special scrutiny where they exceeded two percent (2%) of the hard costs of transition, for licensees being required to relocate to other spectrum.

As we discussed, the 2% threshold is inappropriate in certain contexts. First, that threshold is inappropriate for smaller licensees (*e.g.*, those with only one or a few channels at a single location), because while the overall hard costs may well be less in such a case, the same transition contract would still have to be negotiated, and, especially in congested major markets in the first wave, considerable consulting effort will still be needed to assure that the new channel(s) is/are interference-free and adequately spaced away from co-channel licensees. Stated otherwise, there is a certain floor below which "soft" costs will hardly ever fall, no matter how small the hard costs may be.

Second, the first wave of transition agreements to be negotiated during the first wave necessarily are going to have significantly higher legal fees, and probably other consulting fees as well,

Mr. Robert B. Kelly
April 15, 2005
Page 2

because the parties will be dealing in uncharted territory, and will not be able to draw from previous agreements. Therefore, the first wave transition licensees are going to incur higher soft costs, especially legal fees, than are those in subsequent waves.

The Transition Administrator must take these two factors into account when assessing the reasonableness of soft costs. For the simplest single-channel internal-use licensee, such as a taxicab operator with 100 units and absolutely no complications pertaining to transition (*e.g.*, all units are in company vehicles, no subscriber units involved, ability to retune in stages, no replacement needed, limited redundancy required), the actual hard costs of transition may be very low, possibly under \$100,000. Even here, for the reasons discussed above, there is a likely minimum in soft costs of approximately \$12,000, at least in the first wave. Conversely, where there is an SMR operator with unaffiliated subscribers, there will be very significant non-legal transactional costs in connection with arranging customer schedules, coordinating various temporary moves, and designing appropriate new combiner/repeater operations, such that a minimum for SMR licensees would be at least \$18,000.

Therefore, we strongly recommend that the Transition Administrator institute a two-prong standard, whereby soft costs will be treated as presumptively reasonable wherever they are *either* less than: a) \$12,000 (in the case of non-SMR licensees), or \$18,000 (in the case of SMR licensees); or b) 2% of the hard costs of transition. Doing so will: a) greatly reduce Nextel's costs of paying for the Transition Administrator's time and expenses; b) lead to expedited negotiations and agreements concerning transition of incumbent licensees out of the 851-854 MHz band; c) result in actual physical relocations happening on a faster time table; and d) ultimately cost less than would conducting audits of transitions where the soft cost reimbursement claims are less than the applicable floor. Under the *Supplemental Order, supra*, the Transition Administrator has full discretion to do so consistent with its mandate from the FCC.

I hope the foregoing discussion is helpful to the Transition Administrator in its efforts.

Sincerely,



David J. Kaufman

cc: Mobile Relay Associates
Skitronics, LLC
Smith Limousine
Mobile-One Communications
XW Communications
ECFS Filing System, Docket No. WT 02-55